

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.719/1996
(Shyam Lal Vs. State & Ors.)

Date of order : 22.11.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vijay Mehta, for the petitioner.
Mr. S.N. Tiwari, Dy. Govt. Advocate.

By way of filing this writ petition, the petitioner has challenged the order dated 30.12.95 (Annexure-2) whereby the State Government has refused to refer the matter to the Labour Court for adjudication.

As per the facts of the case, the petitioner was appointed as daily rate employee by verbal order on 15.1.1988 and respondent-Municipal Board, Balotara terminated his services w.e.f. 1.1.1992.

According to the petitioner, he raised an industrial dispute before Conciliation Officer, Balotara and upon repeated notices, respondent No.3 sent a reply to the dispute whereby it was stated that the petitioner was not appointed in the Municipal Board. Thereafter, respondent No.3 time and again

called upon by the Conciliation Officer to attend the conciliation proceedings and produce required muster roll but no muster roll was produced nor the respondent No.3 appeared before the conciliation officer, therefore, conciliation officer sent its failure report to the appropriate government for making reference to the Judge, Labour Court for adjudication. The State Government upon receiving the said failure report refused to refer the matter for adjudication to the Industrial Tribunal vide order dated 30.12.1995 on the ground that no documentary evidence has been produced by the petitioner to show his appointment, which is under challenge.

Learned counsel for the petitioner vehemently argued that there is no power left with the respondent No.1 and 2 to decide the matter and the Industrial Tribunal is having jurisdiction to adjudicate the matter upon reference. It is further contended that before the appropriate government there is no question of producing any evidence for reference. Likewise, Conciliation Officer and the respondent No.1 and 2 had no jurisdiction to administer oath and record evidence, therefore, the matter was to be referred to the Industrial Tribunal for adjudication but on illegal ground, the appropriate government has refused to refer the dispute to the Industrial Tribunal for adjudication. The respondent No.3 is in possession of the documents but it has not chosen to produce

documents despite directions of the conciliation officer, therefore, it is obvious that the appointment and termination of the petitioner was by verbal orders and Municipal Council, Balotara was maintaining muster rolls of his attendance and those muster rolls were to be produced before the conciliation officer but same were not produced and only on the ground that no documentary evidence is on record, the State Government has refused to refer the industrial dispute to the Industrial Tribunal for adjudication, which is totally without jurisdiction and against the law. Therefore, the order dated 30.12.1995 may be quashed and directions may be issued to the respondent No.1 and 2 to refer the industrial dispute to the Industrial Tribunal for adjudication.

Per contra, learned Dy. Govt. Advocate vehemently opposed the prayer and contended that if it is found by the Government that no industrial dispute is in existence then obviously there is power left under Section 12 (5) of the ID Act not to make such reference and in this case the Government is satisfied that there is no case of illegal termination is made out in absence of documents, therefore, the order is perfectly in consonance with the provisions of law.

No written reply has been filed by the State Government.

I have heard learned counsel for the petitioner as well as learned Dy. Government Advocate and perused the writ petition. In my opinion, refusal to refer the matter for adjudication to the Industrial Tribunal is contrary to law because the State Government cannot usurp the jurisdiction, which is left with the Industrial Tribunal. The Government cannot exercise the power of adjudication even if there is no documentary evidence on record. Admittedly, in this case, the petitioner's claim was on the basis of appointment by verbal order and termination from service by verbal order, therefore, the matter was to be decided by the Industrial Tribunal after taking evidence on oath.

It is settled law that the appropriate Government acting under Section 10 or 12 (5) of the Act of 1947 has no power to decide the merits of the controversy. It can only determine whether dispute exists or not. However, in this case, it appears from the impugned award itself that the appropriate Government has refused to refer the matter while considering the merits of the case.

Accordingly, this writ petition is allowed. The order impugned dated 30.12.1995 (Annexure-2) is set aside. The respondent No.1 and 2 are directed to refer the industrial dispute to the concerned Industrial Tribunal for adjudication within a period

of two months from the date of receipt of certified copy of this order.

(GOPAL KRISHAN VYAS), J.

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